

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

July 12, 2005

Vice-Chairman E. Fordham called the meeting to order at 4:07 p.m. and roll was taken.

MEMBERS PRESENT: E. Fordham, S. Brock, C. Kufta, B. Larson

MEMBERS ABSENT: R. Hilt, excused; J. Clingman-Scott, excused; J. Wallace, excused

STAFF PRESENT: M. Cameron, D. Leafers, L. Anguilm

OTHERS PRESENT: K. Jacobs of Eckert Wordell PC; C. Grek of Shoreline Eye Ventures, 1266 E. Sherman Blvd.; M. Krivitzky, 1052 W. Randall Rd.; T. McDermott, 3601 Ohio; P. Kemperman, 1678 W. Harbour Towne Circle

APPROVAL OF MINUTES

A motion that the minutes of the regular meeting of June 14, 2005 be approved was made by C. Kufta, supported by B. Larson and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2005-011: Request for a variance from Section 2326: Off-Street Parking and Loading, to allow a net increase of 26 parking spaces which exceeds the maximum number of parking spaces allowed by ordinance, at 1266 E. Sherman Blvd. by Katie Jacobs of Eckert Wordell P.C. on behalf of Shoreline Ophthalmology. M. Cameron presented the staff report. The subject property is facing East Sherman Blvd. just east of Roberts Street. The property across Sherman Boulevard is in the City of Norton Shores and is mixed commercial, medical uses with some residential structures. The zoning for all the adjacent properties that are located in the City is MC, Medical Care. This variance request is being sought due to a new medical facility being built at 1298 E. Sherman Blvd. and the need for additional parking for this facility. The new facility is owned by the same parties but will be operated as a separate venture and is located on a separate parcel of land. Staff has approved the site plan for the new medical facility at 1298 E. Sherman with a condition that 1266 E. Sherman allocates 2 parking spaces for its use. The Zoning Administrator has reviewed the floor plan of 1266 E. Sherman for the purpose of determining the required number of parking spaces and has found that the building currently has 115 spaces, with the ordinance requiring it to have 59. The new medical facility on the adjacent property at 1298 E. Sherman will have 17 parking spaces on site and two located in the proposed new parking area of 1266 E. Sherman if the variance is approved. If the variance is not approved, the two spaces would need to be allocated from the existing 115 spaces. Staff has made a number of visits to this property at various times of the day, both before and after construction had begun

on the adjacent property. As a result of these visits, staff has observed that the existing parking areas appear to be heavily utilized by the current medical practice. The parking lots of both properties would be interconnected if the variance is approved. This would allow for a second ingress and egress to the two properties and should assist traffic flow on the sites. Staff has received no comments regarding this case.

K. Jacobs explained the plans for the new parking. There is a growing ophthalmology practice and a large optical business at this location. The two parking lots would be joined to help ease traffic flow between the two sites. B. Larson asked if this was a situation where growth was more than expected. C. Grek stated they have been at this location since 1988. There is a large demand for eye surgery, which is performed at their surgical facility at this location. There is also a busy optical business there.

A motion to close the public hearing was made by C. Kufta, supported by B. Larson and unanimously approved.

The following findings of fact were offered: that there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district, that such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity, that the authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest, that the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner, that the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner, and that the requested variance is the minimum action required to eliminate the difficulty.

A motion that the request to exceed the maximum number of parking spaces by more than one-third of the minimum required spaces, for a total of 143 parking spaces on the property, be approved subject to the conditions that 1) the variance is recorded with the deed to keep record of it in the future, 2) that the additions to the property must be complete within one year (Sec. 2504) or the variance is void, and 3) the additions are constructed as shown on the approved site plan, was made by C. Kufta, supported by B. Larson and unanimously approved.

Hearing, Case 2005-016: Request for a variance from Section 2334 Signs, to allow a second freestanding sign on the same property at 560 Mart, by Sylvia Precious of Port City Princess Cruises. M. Cameron presented the staff report. The subject property is commonly referred to as the Mart Dock, which is located north of Shoreline Drive at Fifth Street on Muskegon Lake. The adjacent properties to the west are zoned WM, Waterfront Marine; properties to the south across Shoreline Drive are zoned H, Heritage and B-3, Central Business. The properties to the east are zoned B-2, Convenience and Comparison Business. All WM-zoned property with a legal business use on it is entitled to one monument sign, regardless of the number of businesses on the property. An exception for properties with Muskegon Lake frontage has been provided for in the ordinance, and it allows for an additional monument or pole sign on the water frontage only. The proposed second sign would not be located along any lake frontage. The West Michigan Dock & Market Corporation has one nonconforming freestanding pole sign on the site. This sign can continue as a nonconforming sign for its useful life under certain conditions but may not be

enlarged, expanded, or extended. The site has enough street frontage to be entitled to one monument sign of substantial size, provided that the sign is no taller than 8 feet in height and there is not already a pole sign on the site. The applicant is proposing a 24 square foot, double-faced monument-style sign in a “V” shape. A “V” shaped sign is allowed and is counted as one sign as long as the least angle of intersection does not exceed ninety degrees. The signs must be connected in the middle. The proposed sign would be required to be 10 feet from the existing sign. The proposed location of the sign is directly in front of the existing freestanding sign on the site and faces Shoreline Drive. Staff has received one comment regarding this case. Mr. Bill Seebach’s e-mailed comment reads, “Within standards of downtown neighborhood, let’s approve the sign. What we want is activity in the area. Thank you.”

B. Larson felt the sign ordinance was restrictive, especially for buildings that had more than one business in them. E. Fordham agreed, stating that the ZBA has heard many sign cases.

A motion to close the public hearing was made by C. Kufta, supported by B. Larson and unanimously approved.

B. Larson felt that since the City asked the Port City Princess to move, the Board should accommodate this request. He also felt it would be a positive gesture toward the Mart Dock. C. Kufta asked if a directional sign might be more appropriate. He was concerned that there could be a large group of signs on the property. M. Cameron stated that applicants wanted the sign placed near the road because the boat is so far from the road.

The following findings of fact were offered: that there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district, that such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity, that the authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest, that the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner, that the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner, and that the requested variance is the minimum action required to eliminate the difficulty.

A motion that the variance request to allow installation of a second freestanding sign located as shown on the provided site plan at 560 Mart, be approved subject to the conditions that, 1) the variance is recorded with the deed to keep record of it in the future, 2) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, and 3) the variance is granted for the currently proposed sign and location only, was made by B. Larson, supported by S. Brock and unanimously approved.

Hearing, Case 2005-017: Request for a variance from Section 2306 Allocation of Lot Areas & Configuration of Lots, to reduce the street frontage requirement from 50 feet of frontage along a public road or approved private road to 15 feet of frontage for six parcels to be created from parcel 61-24-201-761-0001-00 using an easement, by Mike Krivitsky of Orion Associates. The subject property is located just west of Harbour Towne Circle. The adjacent properties facing

Nelson Street are all zoned R-1 Single Family Residential and Harbour Towne development is a Planned Unit Development zoned LR, Lakefront Recreation. The parcel of land that the owners would like to split formerly faced Dewey Street until that street was vacated to accommodate a previously proposed development. There is also a section of the property that formerly faced Nelson Street until it was vacated. Currently the property does not have any frontage along a roadway. The ordinance requires that a parcel shall have the required minimum lot width along and adjacent to a public road or approved private road. This would not allow for access across an easement. Direct access to Harbour Towne Circle for the subject parcel is denied due to a narrow strip of land that is owned by another party. The applicant has negotiated an access easement, which would allow the three driveway access points. If the variance is granted, it would allow the owners to proceed with a lot split request to divide the property into 7 separate parcels with six of them being buildable. There are no plans for the remaining lot that faces vacated Nelson Street at the present time. Five of the proposed buildable lots would be 80 feet wide and 158 feet deep. A sixth lot would be larger to incorporate an area of state-designated critical dunes that would be unbuildable. Each lot would have one 15-foot drive approach shared with the adjacent property's 15-foot drive approach to form one of the three, 30-foot driveway approaches that would access Harbour Towne Circle via an easement. There will be three drive approaches of 30 feet each to service the six parcels. Staff has received one comment regarding this case from Thomas Blake, owner of 1640 and 1634 Nelson. Mr. Blake thinks it would be fine and is in favor of the request.

E. Fordham asked about the strip of land mentioned above, that blocked access to Harbour Towne Circle. M. Cameron pointed out the area on a map and stated it was owned by John Darien. T. McDermott, whose lot abuts the subject property, stated he was in favor of the request. E. Fordham asked if the area was considered a critical dune area. M. Krivitzky stated that part of it was. The non-buildable trapezoidal-shaped lot at the end is in a critical dune area, as is a small strip of land on the other end. The DEQ had been out to the property and staked out exactly where the critical dune areas were. P. Kemperman lives across from the site and has no objection to this request.

A motion to close the public hearing was made by B. Larson, supported by C. Kufta and unanimously approved.

The following findings of fact were offered: that there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district, that such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity, that the authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest, that the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner, that the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner, and that the requested variance is the minimum action required to eliminate the difficulty.

A motion that the variance request to reduce the frontage for the proposed six buildable lots as shown on the submitted site plan, from the minimum lot width of fifty feet facing a public road or approved private road to fifteen feet, using an easement, be approved, subject to the conditions

that, 1) the variance is recorded with the deed to each buildable parcel to keep record of it in the future, and 2) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, was made by B. Larson, supported by C. Kufta and unanimously approved.

OLD BUSINESS

None

OTHER

None

There being no further business, the meeting was adjourned at 4:44 p.m.

dml
7/12/05